

Hon. Jeffrey Berger  
Legislative Office Building, Room 4109  
Hartford, CT 06106-1591  
Jeffrey.Berger@cga.ct.gov

134 Gaylord Avenue  
Waterbury, CT 06708

Re: Probate Court Fee Cap and Funding of the Probate Court

Dear Representative Berger:

By way of introduction, I am a lawyer in private practice in Waterbury. I practice in the area of trusts and estates and elder law and serve on the Executive Committee of the Connecticut Bar Association's Estates and Probate Section and Elder Law Section. I am also a Fellow of the American College of Trust and Estate Counsel and a past chair of the Connecticut Bar Association's Elder Law Section. The views expressed in this letter are my own, but are widely shared by fellow practitioners.

Last year, the General Assembly eliminated general funding of the probate court system and introduced significant user fee increases. Included among those increases was the removal of the cap on fees for decedents' estates, which for years had been limited to \$12,500. Except in rare instances, the fee on a decedent's estate is based on the size of a decedent's "taxable" estate, which is tied to Connecticut's estate tax. Assets passing under a will and those passing outside a will – life insurance, IRAs, annuities, interests in joint accounts, and revocable living trusts – are all subject to the fee. The fee rates start at 1% and gradually decline to  $\frac{1}{4}$  of 1% for the portion of estates exceeding \$500,000. That rate schedule changed last year, when the rate increased to  $\frac{1}{2}$  of 1% for the portion of estates exceeding \$2 million in value. In all cases, a 50% discount is given to interests passing to the decedent's spouse; that discount was not changed in 2015.

Until last year, the matter of probate fees on decedents' estates received little attention. Although I handle many estates, almost none of my clients commented on their probate court fees. That changed last year. The 2015 fee increases for decedents' estates received very negative attention not only in Connecticut, but nationwide, principally because of the removal of the cap. Although the fee increases on decedents' estates affected only estates of \$2 million or more, the possibility that large Connecticut estates could pay enormous fees, unlike probate fees assessed in any other state, gave wealthy people one more reason to leave the State and avoid not only outsized probate fees but also Connecticut's estate tax and income tax.

I understand that the Governor is trying to limit the damage caused last year by limiting probate fees to \$40,000. I recommend that the cap be reduced to \$20,000. At \$20,000, the cap in a typical estate not passing to a spouse would be reached for at \$4,877,000. At \$40,000, the cap would be reached at \$8,877,000. For estates passing entirely to spouses, the cap would be reached at double those figures.

Hon. Jeffrey Berger  
February 25, 2016  
Page 2

Although reinstituting a cap on fees for decedents' estates will undo some of the damage, the legislature should go further and fund the probate courts in the same manner as the superior and appellate courts. Limited, proportional user fees are appropriate, but not user fees that run into the tens of thousands of dollars. For that reason, I strongly urge in this short legislative session that the legislature cap probate fees for decedents' estates at \$20,000 and next year re-examine how it funds its probate court system.

Respectfully,

Mark W. Dost  
Tinley, Renahan & Dost LLP  
60 N. Main St., Fl. 2  
Waterbury, CT 06702  
203-596-9030

31 Gaylord Glen  
Waterbury, CT 06708